



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,262	01/10/2007	Franco Varvello	J1036.0014/P014	2576

24998 7590 10/09/2009
DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
----------	--------------

1794

MAIL DATE	DELIVERY MODE
-----------	---------------

10/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,262	Applicant(s) VARVELLO ET AL.	
	Examiner Helen F. Pratt	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in part b, line 3 in the use of the phrase "in order to give the flour enriched with cereal germ oil". One might say "in order to enrich the flour with cereal germ oil".

Claims 4, 16, 35, 36, are indefinite in the use of the word "preferably". A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 4, 35 and 36 recite the

Art Unit: 1794

broad recitation as in claim 4 “comprises a drying state”, and the claim also recites “preferably at a temperature between 30-60C. , and claim 16 recites between...” and then “preferably ...”, and as in claims 35 and 36 “a proportion between 1:1..and 5:1” and the claim also recites “preferably in a portion of 2:1” and claim 36 a similar situation, which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Diets (1,974,808).

Oil was extracted from cereal germ, and then mixed with the flour stream as in claim 2 of the reference to Diets.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 4, 28- 29, 31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinschmidt et al. (3,506,448) in view of Grandel (2,879,167) and Diets (1,974,808).

Kleinschmidt et al. disclose in his discussion in the prior art, a composition containing fat, which is distributed over the surfaces of the particles in the composition. The composition can contain soy flour, and corn flour as a carrier material, and an oil such as soybean oil that can be peroxidized by the lipoxidase in the soy flour, the oil coats the surfaces of the corn flour (col. 1, lines 40-63) to make a bread improver composition containing oil. The improvement in the patent substitutes part of the corn flour for at least one other powdery material (col. 2, lines 8-15 and col. 3, lines 6-38). The edible oils can be wheat germ oil which is used to coat the flour (col. 2, lines 63-71). Claim 1 differs from the reference in the step of separation of the germ oil from the cereal germ. However, as oil is used, separation at some point has occurred. No patentable distinction is seen in using the very same germ oil from the separation of the cereal germ, absent anything new or unobvious. Also, Grandel discloses that it is

Art Unit: 1794

known to separate oil from cereal germs by hydraulic pressing or extraction with solvent. Diets discloses that it is known to separate the germ from the cereal, to crush the germ to a fine crushed condition, and to mix the oil from the germ with flour (page 1, col. 1, lines 44-55, page 2, claim 2). Oil was extracted from the germ, and then mixed with the residue of the germ, or the oil was extracted and mixed with the flour stream as in claim 2 of the reference to Diets. The germ oil mixture was introduced into the flour stream in amounts of 2% by weight (page 1, lines 103-110). Even though this germ oil is mixed with the residue of the germ, the residue still would have been oily, and would have mixed with the flour. Also, the claim does not exclude mixing the germ oil with any other material before combining it with the flour. Therefore, it would have been obvious to use germ oil in particularly in the process of Kleinschmidt et al. as disclosed by Grandel and Diets.

Squeezing the cereal germ and milling the deoiled germ residue to give a germ flour is disclosed by Grandel as in claim 2 (col. 1, lines 65-70, col. 2, lines 1-4). Crushing is disclosed by Diets (page 1, col. 1, lines 44-55) as in claim 31. Therefore, it would have been obvious to make a germ flour in the process of Kleinschmidt et al.

Kleinschmidt et al. disclose as in claim 3, mixing oil, which can be germ oil with flour (col. , lines 55-66). Dietz discloses mixing germ oil with flour or crushed germ with residue of germ and mixing with flour. Dietz discloses crushing almost oil-free germ to a flour, and mixing the germ flour with the germ oil, and then with the flour (page 2, lines 10-15, col. 2, lines 76 to 80). Therefore, it would have been obvious to add the crushed germ flour mixed with germ oil as disclosed by Dietz with flour enriched germ oil of

Art Unit: 1794

Kleinschmidt et al. as the two steps of process of claim 3 are known to provide an enriched wheat germ and wheat germ oil flour.

Diets discloses that it is known to separate the germ from the cereal, crushing the germ to a fine crushed condition, and to mix the oil from the germ with flour as in claim 28 (page 1, col. 1, lines 44-55, page 2, claim 2).

Diets does not disclose how much oil is mixed with the flour as in claim 29. It would have been within the skill of the ordinary worker to add whatever amount which would have made for a functional flour according to how it was used. Therefore, it would have been within the skill of the ordinary worker to use particular amounts of oil mixed with the flour.

Claim 35 is to mixing the germ flour with germ oil flour in particular amounts and claim 36 to using particular amounts of germ flour and germ oil enriched flour with cereal flour. However, particular amounts are seen as being within the skill of the ordinary worker, depending on how much germ flour and oil is needed to make a functional flour. Therefore, it would have been obvious to use particular amounts of flour in various proportions in the process of the combined references. .

Wheat, is disclosed as in claim 37 by Diets, Kleinschmidt et al. disclose corn flour (col. 1, lines 50-55) and Grandel discloses germs of cereals in general (col. 1, lines 25-30). Therefore, it would have been obvious to use known cereal in the claimed process. The limitations of claims 38 and 39 have been disclosed above and are obvious for those reasons.

Various types of soft wheat flour are known as in claim 40, and it would have been within the skill of the ordinary worker to choose which type of flour to enrich, depending on the use of the flour.

The use of flour for making oven-baked products as in claim 41 is an obvious use of flour, as it cannot be eaten raw, and baked products such as bread, cakes, and rolls are well known. Therefore, it would have been obvious to use the enriched flour in bakery products.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinschmidt et al. (3,506,448) in view of Grandel (2,879,167) and Diets (1,974,808).as applied to claims 1, 4, 5 above, and further in view of Hickman (2,150,684). Hickman discloses the use of a rotating cylinder for drying using electricity (col. 3, lines 57-65). As electricity provides the same function as infrared ray lamps, electrical heating of the reference may be substituted for the infrared lamps in a process claim since they fulfill the same function of heating. Therefore, it would have been obvious to use another heating device for the same function in the process of the combined references.

Claims 4-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-3 above, and further in view of Petzold et al. (DE004017114 A1)

Claim 4 further requires drying the cereal germ at between 30 to 60 C., and claim 5 drying at 30 C. Petzold et al. disclose drying cereal germ products to a moisture content of 5-6 at up to 40 C in a fluidized-bed granulator. "Up to 40 C" includes the

Art Unit: 1794

temperature of 30 C. Therefore, it would have been obvious to dry at the claimed temperature in the process of the combined references.

The particular lengths of times and temperatures as in claims 7-10 are seen as being within the skill of the ordinary worker depending on what the product is to have been used for. The particular humidity as in claim 11 is within the references' amount of 5 to 6% as in claim 11. A particular humidity of about 8 is seen to read on 6 as in claim 12. Also, it would have been within the skill of the ordinary worker to raise the temperature to 8 depending on what the product is to have been used for. For instance, if one wanted to combine the germ with flour, one would want the humidity of the germ to be that of the flour in order to prevent stickiness. Therefore, it would have been obvious to dry at particular times and temperatures and humidity's.

Milling the deoiled germ residue to give a germ flour is disclosed by Grandel as in claim 32 (col. 1, lines 65-70, col. 2, lines 1-4). Milling using a stone mill is so old that it hardly needs a reference. Therefore, it would have been obvious to mill using known types of milling equipment in the process of the combined references.

Claim 33 further requires combining the meal with the deoiled wastes (residues) in a plansifter to make germ flour, and claim 34, particular amounts of residues. However, the use of a sifter is commonly used to blend ingredients together such as baking powder and salt with flour. It would have been within the skill of the ordinary worker to use particular amounts of residues in order not to waste a nutritious product, and to act as filler in the flour. Therefore, it would have been obvious to mix residues of the wheat germ in the process of the combined references.

Using particular amounts of germ flour with the oil enriched flour as in claims 35 and 36 is seen as being within the skill of the ordinary worker depending on the function of the flour. Therefore, it would have been obvious to use particular amounts in the process of the combined references.

Claims 13- 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinschmidt et al. (3,506,448) in view of Grandel (2,879,167) and Diets (1,974,808) as applied to claim 1 and 2 above, and further in view of Cagney et al. (5,112,638).

Claims 13 requires pressing, the wheat germ, claim 14, in a horizontal press, and claims 15 and 16, at particular temperatures. Cagley et al. disclose that it is known to use a twin screw horizontal press (col. 20, lines 38-46). Even though water is being squeezed from the fiber, in the reference to Cagley et al., the press could have been used to squeeze any liquids from solids, and in particularly to squeeze oil from a fiber (claim 17) containing material such as wheat germ, since pressing any oily material allows for the exudation of oil. Various temperatures as claimed of amount 99-100 C are disclosed (para. 38 under "Summary of a process..."). A twin screw press would allow for an extruded product as in claim 18. It would have been within the skill of the ordinary worker to use particular amounts of heat, depending on what was being extruded, and the effects of heat on the material. Therefore, it would have been obvious to treat as above in the process of the combined references.

Certainly, processing waste are separated as in claims 19-21 as this is what is left behind, when water or oil is removed from a fibrous material. It would have been within the skill of the ordinary worker to remove particular amounts of waste in particular

Art Unit: 1794

amounts of time as in claims 22 and 23. Therefore, it would have been obvious to treat as above in the process of the combined references.

Claim 24 further require pressing the waste to recover germ oil, and then filtering it as in claim 25 . However, the press of waste could have used the same press as above to extract oil. Certainly, it would have been within the skill of the ordinary worker to filter the oil since other particles of the waste material could easily be in the oil as in claim 26. Further combining of the oils would have been obvious since they are the same ingredient as in using known presses such as a filter press as in claim 27. Therefore, it would have been obvious to treat the oil as claimed in the process of the combined references.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinschmidt et al. (3,506,448) in view of Grandel (2,879,167) and Diets (1,974,808) as applied to claims 1 and 28 above, and further in view of Rankin et al. (3,073,724).

Claim 30 further requires spraying the flour with germ oil from an atomizer. Rankin et al. disclose coating with a film of liquid shortening sprayed from the atomizer, and also disclose spraying an acid onto flour (col. 2, lines 1-60). Certainly, any liquid can be sprayed through an atomizer as that is the function of an atomizer. Therefore, it would have been obvious to use an atomizer as disclosed by Rankin et al. to spray a liquid such as oil onto flour in the process of the combined references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

Art Unit: 1794

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/
Primary Examiner, Art Unit 1794

Hp 10-7-09